

BAKER & HOSTETLER LLP

45 Rockefeller Plaza

New York, New York 10111

Telephone: (212) 589-4200

Facsimile: (212) 589-4201

David J. Sheehan

Email: [dsheehan@bakerlaw.com](mailto:dsheehan@bakerlaw.com)

Marc E. Hirschfield

Email: [mhirschfield@bakerlaw.com](mailto:mhirschfield@bakerlaw.com)

Bik Cheema

Email: [bcheema@bakerlaw.com](mailto:bcheema@bakerlaw.com)

**Hearing Date and Time: April 13, 2010 at 10:00 a.m.**

**Objection Deadline: April 6, 2010 at 5:00 p.m.**

*Attorneys for Irving H. Picard, Esq., Trustee  
for the Substantively Consolidated SIPA Liquidation  
of Bernard L. Madoff Investment Securities LLC  
and Bernard L. Madoff*

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

Adv. Pro. No. 08-01789 (BRL)

SIPA Liquidation

(Substantively Consolidated)

**JOINT STATEMENT OF THE TRUSTEE AND SURGE TRADING INC., F/K/A  
CASTOR POLLUX SECURITIES, INC. IN CONNECTION WITH TRUSTEE'S  
MOTION TO AUTHORIZE TRUSTEE'S ENTRY INTO THIRD AMENDED &  
RESTATED ASSET PURCHASE AGREEMENT WITH SURGE TRADING INC., F/K/A  
CASTOR POLLUX SECURITIES, INC.**

TO THE HONORABLE BURTON LIFLAND  
UNITED STATES BANKRUPTCY JUDGE:

Irving H. Picard, (the “Trustee”), as trustee for the substantively consolidated liquidation of the business of Bernard L. Madoff Investment Securities LLC and the estate of Bernard L. Madoff and Surge Trading Inc. f/k/a Castor Pollux Securities, Inc. (“Surge”), by and through their undersigned counsel, submit this Statement in connection with the Trustee’s Motion dated March 30, 2010 (Docket No. 2116) (the “Motion”)<sup>1</sup> seeking authorization to enter into a Third Amended and Restated Asset Purchase Agreement (the “Amended Agreement”) with Surge. Further, Surge submits this Statement in support of the Motion.

1. On March 30, 2010, the Trustee filed the Motion. By the Motion, the Trustee seeks authorization to enter into the Amended Agreement to permit Surge to undergo a reorganization. In particular, the proposed amendment to the Prior Agreement is being sought in connection with the anticipated consummation of a material equity financing of more than \$15 million by Surge that will provide additional working capital for operation and expansion of the Subsidiary’s broker-dealer business. Subsequent to the filing of the Motion, Surge informed the Trustee that although the Motion stated that Surge’s auditor refused to certify Surge’s 2009 audit, in fact, Surge’s audit for fiscal year 2009 is currently ongoing. Accordingly, the Trustee and Surge file this Statement to clarify the Motion in this respect.

---

<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meanings given such terms in the Motion.

2. Additionally, Surge wishes to advise the Court that it supports the Motion and the related proposed amended to the Prior Agreement as is set forth in the Term Sheet annexed to the Motion.

Dated: New York, New York  
April 1, 2010

Respectfully submitted,

/s/ Marc Hirschfield

Baker & Hostetler LLP  
45 Rockefeller Plaza  
New York, New York 10111  
Telephone: (212) 589-4200  
Facsimile: (212) 589-4201  
David J. Sheehan  
Email: [dsheehan@bakerlaw.com](mailto:dsheehan@bakerlaw.com)  
Marc Hirschfield  
Email: [mhirschfield@bakerlaw.com](mailto:mhirschfield@bakerlaw.com)  
Bik Cheema  
Email: [bcheema@bakerlaw.com](mailto:bcheema@bakerlaw.com)

*Attorneys for Irving H. Picard, Esq.,  
Trustee for the SIPA Liquidation of  
Bernard L. Madoff Investment Securities LLC*

-and-

/s/ Richard J. Corbi

PROSKAUER ROSE LLP  
1585 Broadway  
New York, New York 10036-8299  
Telephone: (212) 969-3000  
Scott J. Rutsky  
Richard J. Corbi

*Attorneys for Surge Trading Inc.  
f/k/a Castor Pollux Securities, Inc.*